THE DECALOGUE JOURNAL

A PUBLICATION OF THE DECALOGUE SOCIETY OF LAWYERS

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FREE SPEECH

. . ."Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. Every denunciation of existing law tends in some measure to increase the probability that there will be violation of it. Condonation of a breach enhances the probability. Expressions of approval add to the probability. Propagation of the criminal state of mind by teaching syndicalism increases it. Advocacy of law-breaking heightens it still further. But even advocacy of violation, however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on. The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind. In order to support a finding of clear and present danger it must be shown either that immediate serious violence was to be expected or was advocated, or that the past conduct furnished reason to believe that such advocacy was then contemplated". . .

JUSTICE LOUIS D. BRANDEIS — WHITNEY V. CALIFORNIA, 274 U. S. pp. 357 - 376 - 377.

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IN THIS ISSUE

Seek Decalogue Affiliation

At the invitation of several of our Detroit, Michigan members, President Archie H. Cohen and past president Oscar M. Nudelman attended a meeting in that city, on August 22, to discuss plans for the possible formation there of an organization patterned after our Society.

Our Detroit members, much impressed with the popularity and growth of The Decalogue Society of Lawyers, questioned our delegates at the conference, on the structure, purposes and activities of our Bar Association. Nudelman, in reporting the Detroit meeting to our Board of Managers stated that our Detroit colleagues are, as yet, unsure whether to plan the organization of a legal body of their own or, to become a branch of The Decalogue Society of Lawyers. Our delegates stressed that whatever the wish of the Detroit members —whether an autonomous body is planned, or a branch—The Decalogue Society of Lawyers will give, subject to mutual commitments, its heartiest cooperation to the proposed undertaking.

There are more than 700 lawyers of Jewish faith in Detroit. The meeting took place in the offices of member Samuel L. Lieb. Past president Samuel Allen has been appointed by President Archie H. Cohen, chairman of a Decalogue committee to maintain contact with the Detroit lawyers.

DECALOGUE FORUM MEETING

Bernard H. Sokol, Chairman of The Decalogue Forum Committee announces that member Albert O. Kegan will speak on November 30 at 12:15, at a luncheon at the Covenant Club. His subject will be "Fun, Fame and Fortune in Patents." Mr. Kegan, long a practicing patent attorney, is a lecturer on Patents and Copyrights, School of Law, Northwestern University.

Chairman Sokol states that announcements of future Forum meetings will follow shortly.

Illinois Legislation (1951) Affecting the Practice of Law

By HARRY G. FINS

Harry G. Fins, member of The Decalogue Society's Board of Managers is the author of ILLINOIS MOTION AND PETITION PRACTICE, ILLINOIS ADMINISTRATIVE PROCEDURE, ILLINOIS ADMINISTRATIVE REVIEW ACT ANNOTATED, ILLINOIS PROCEDURE, AND FEDERAL PRACTICE GUIDE. *Fins is a lecturer in the Post Graduate Division of the John Marshall Law School and at Lawyers Post Graduate Clinics.*

There were introduced in the Illinois 67th General Assembly 786 Senate Bills and 1258 House Bills, making a total of 2044, out of which number 1040 were passed by the Legislature. The Governor vetoed 134, leaving a balance of 906 bills which are today part of our statutes. Of these, the following affect the practice of law:

Civil Practice

House Bill 971 amended Sections 48 and 50 of the Illinois Civil Practice Act and added Section 50a thereto, which brings about an extremely important change in Illinois practice concerning dismissals and defaults. These amendments provide that no ex parte action shall be taken granting any motion for involuntary dismissal, or for the entry of a judgment by default or decree pro confesso, or to dismiss a case for want of prosecution or to enter a default judgment order or decree unless and until "every attorney of record has been notified by the clerk of the court in which the action or suit is pending that such action is contemplated to be taken upon a certain date. Such notice shall be given not less than five days before the action is taken and may be given by first class United States mail. An affidavit of the clerk stating that such notice properly addressed and with sufficient postage was mailed within the time specified herein shall be sufficient evidence of such notice."

Judge Harry M. Fisher of the Circuit Court of Cook County recently held this Amendment unconstitutional, and plans are now being made to test the validity of the Amendment in the Supreme Court of Illinois.

The Amendment does not affect practice in the Municipal Court of Chicago because the Civil Practice Act is not applicable to the Municipal Court of Chicago (Ptacek v. Coleman, 264 Ill. 618), and to make certain that the Amendment will not apply by virtue of Rule 79 of the Municipal Court (which provides that as to matters not provided for in the Municipal Court Rules the practice shall be as in Circuit Courts) the Municipal Court of Chicago passed General Order 1650 specifically providing that the Amendment shall have no application to practice in its Court.

Criminal Law

House Bill 115 provides that:

> *"Whoever shall, while holding another person in custody, deny that other person his right to consult and be advised by an attorney-at-law, whether or not such person is charged with a crime; and, whoever shall prevent another person held in custody from notifying his family within 24 hours of the fact that he is being so held, shall be fined not less than $100 nor more than $1,000 or shall be imprisoned for not less than ten days nor more than six months, or both."*

Senate Bill 53 changes petty larceny property values from $15.00 to $50.00.

Senate Bill 453 has added treason to the list of crimes which have no statute of limitations.

Administrative Law

House Bill 141 establishes for the State of Illinois one central office—that of the Secretary of State in Springfield—where all administrative rules and regulations of all the agencies in the State must be filed. The pertinent sections of the Act read as follows:

> "On or before July 1, 1952, each agency shall file with the Secretary of State a copy of each rule promulgated by it on or before the effective date of this Act. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect, but nothing herein contained shall be construed to require the filing of additional copies of any rule or rules which may have been filed with the Secretary of State prior to the effective date of this Act.
>
> "A certified copy of every rule adopted by an agency subsequent to the effective date hereof, shall be filed with the Secretary of State and no such rule shall become effective less than ten days after the copy thereof has been so filed, except that, in case of emergency, a rule may become effective immediately upon such filing if accompanied by a certificate executed

by the director, chairman or officer in charge of the agency stating the specific reasons for the emergency."

Wrongful Death

House Bill 222 has increased the ad damnum under the Injuries Act and provides that in case of wrongful death there may be a recovery

"not exceeding $20,000 where such death occurred on or after the effective date of this amendatory Act of 1951."

Survival of Actions

House Bill 996 provides for the survival of actions under the Dram Shop Act.

Garnishment

Senate Bill 221 changes the garnishment exemption from $20.00 to $25.00 per week for the head of a family. This Act will take effect on January 1, 1952.

Divorce

Senate Bill 135 aims to reverse the doctrine established by the Supreme Court of Illinois in *Floberg v. Floberg,* 358 Ill. 626 (1934). In that case Mrs. Floberg filed a suit for separate maintenance. While the separate maintenance action was pending, Mr. Floberg filed a counterclaim for divorce on the ground of desertion. There was a full year's desertion from the time of the filing of the counterclaim but there was less than a year's desertion from the time of the filing of the original Complaint for separate maintenance. The Supreme Court held that the time during which the separate maintenance suit was pending was "time out" and could not be taken into consideration in order to make up the required one year period for desertion. The *Floberg* doctrine was followed in *Van Dolman v. Van Dolman,* 378 Ill. 98 (1941), *Holmstedt v. Holmstedt,* 383 Ill. 290 (1943), and *Hopkins v. Hopkins,* 399 Ill. 160 (1948). Another example of the application of the *Floberg* doctrine appears in *Plunkett v. Plunkett,* 304 Ill. App. 594 (1940). Mrs. Plunkett filed a suit for separate maintenance two days after she and her husband separated. After the separate maintenance action was pending for thirteen months, Mrs. Plunkett filed an Amended Complaint for Divorce charging desertion during the period while the separate maintenance was pending. The Appellate Court of Illinois, for the First District, dismissed the plaintiff's Amended Complaint for Divorce for want of equity and held that the period during which the separate maintenance action was pending was "time out" and could not be counted to make up the year desertion necessary for a divorce. Senate Bill 135 abolishes the *Floberg* doctrine and provides, that:

"If during the period of any desertion which if uninterrupted for one year would be a ground for divorce under this Act litigation for either divorce or separate maintenance shall pend between the parties, the time so consumed by said litigation shall not be deducted in any computation of the desertion period."

Prior to 1951, the law was that where the ground for divorce occurred in Illinois, it was essential that the plaintiff be a resident of Illinois but it was not necessary that the plaintiff be a resident of this State for any particular period (Cohagen v. Cohagen, 294 Ill. 439; Dings v. Dings, 123 Ill. App. 318; Moscherrosch v. Moscherrosch, 152 Ill. App. 52). This was changed by House Bill 216 which amends Section 2 of the Divorce Act, dealing with residence, and adds the following:

"But in no event shall a person be entitled to a divorce where the offense or injury complained of was committed within this State unless the plaintiff or the defendant shall have resided in this State for a continuous period of at least six months next before filing his or her complaint."

Probate

House Bill 975 amended 18 sections of the Probate Act and aims to overcome the result reached by the Supreme Court of Illinois in *Bruce v. McCormick,* 396 Ill. 482 (1947). In that case a widow, before perfecting dower, conveyed her dower interest to a grantee by quit-claim deed. The Supreme Court held that since dower at common law and by statute was a future interest, it could not be conveyed and the grantee received no interest whatsoever. House Bill 975 grants the widow, upon her husband's death, a vested interest in fee simple in the husband's real estate, of which vested interest she may divest herself by electing to take dower. Thus, any conveyance that the widow makes, as to real estate of which her husband died seized, will be valid and subject to conveyance by her. The Probate Act, as so amended, also provides, that:

"Any conveyance of real estate or of all interest therein by a surviving spouse before the expiration of the period in which he may elect to take dower as provided in Section 19, bars the right of the surviving spouse to elect to take dower in the real estate so conveyed."

Senate Bill 527 added Section 340a to The Probate Act which provides:

"An executor, unless otherwise directed by the decedent in his will, an administrator, guardian, or conservator, shall have authority to join with the spouse of the decedent or of a ward in the making of a joint Federal or State income tax return for the decedent or ward and his spouse, and to consent for Federal or State gift tax purposes to gifts made by the spouse of a decedent or ward to the end that gifts to which consent is given shall be treated for Federal or State gift tax purposes as made one-half by the decedent or ward and one-half by his spouse. Any liability incurred by an executor, administrator, guardian, or conservator pursuant to any such joined or consent shall be incurred on behalf of the estate of the decedent or ward and not individually.

House Bill 1177 amends the law with regard to joint tenancy and provides:

"When shares of stock, bonds or other evidences of indebtedness or of interest are or have been issued or registered by any corporation, association or other entity in the names of two or more persons as joint tenants with the right of survivorship, such corporation, association or other entity and their respective transfer agents may, upon the death of any one of such registered owners, transfer said shares of stock, bonds, or other evidences of indebtedness or of interest to or upon the order of the survivor or survivors of such registered owners, without inquiry into the existence, validity or effect of any such will or other instrument in writing or the right of such survivors to receive the property, and without liability to any other person whomsoever who might claim an interest in or a right to receive all or a portion of the property so transferred."

Releases

House Bill 228 provides that a release of judgment must be executed and recorded in the manner required by the statute. A recording fee of $1.00 is provided for.

House Bill 229 provides that a release of a mortgage of real or personal property must be executed and recorded in the manner required by the statute. A form of release is provided by statute.

Seals Abolished

House Bill 923 abolishes the need of a seal in a deed for the conveyance of real estate.

House Bill 924 provides:

"The use of private seals on written contracts, deeds, mortgages or any other written instruments or documents heretofore required by law to be sealed, is hereby abolished, but the addition of a private seal to any such instrument or document shall not in any manner affect its force, validity or character, or in any way change the construction thereof."

Interchange of Judges

House Bill 339 provides for interchange of city court judges with judges of the Circuit, Superior, Municipal, County and Probate Courts.

Miscellaneous

By Senate Bill 480 the Uniform Enforcement of Foreign Judgments Act, consisting of 18 sections, was made part of Illinois Law.

By House Bill 1253 a new Workmen's Compensation Act was enacted and the previous Act repealed.

By House Bill 1254 a new Workmen's Occupational Diseases Act was enacted and the previous Act repealed.

By House Bills 340, 1024 and 1207, the Unemployment Compensation Act, consisting of 151 sections, was revised and renumbered.

By House Bill 145 "The Park District Code," consisting of 97 Sections, was revised and renumbered.

By House Bill 234 a "Mental Health Code" was enacted consisting of 111 Sections.

Tenth Anniversary of Decalogue Diary and Appointment Book

The publication of the next 1952 issue of the Decalogue Directory and Appointment Book marks the beginning of the eleventh year of uninterrupted annual appearance of this important volume. Founded in 1941, observed Oscar M. Nudelman, Chairman of the Diary Committee since its first issue, this activity of our Society won instant approval of our membership. Each year, acting on the suggestions of members there took place various improvements and additions which enhanced the utility and value of the Diary. The next issue, asserts Nudelman, will conform both in content and format to its traditional standard.

Nudelman reports substantial progress in the work on the next, 1952 volume. Delivery of the Directory, it is expected, will take place the latter part of next month. Help is needed, as in previous years, to finance the publication of our Diary. Members are advised that the price of a page advertisement is fifty dollars and, proportionately, less for smaller space. A deficit in publication costs must be borne by our treasury. Our Chairman urges members to solicit patronage from clients and friends. For further information please consult Oscar M. Nudelman, Chairman, Appointment Book and Directory, 134 North La Salle Street, FRanklin 2-1266.

DECALOGUE ISSUES

The President's Column

The Decalogue Society of Lawyers functions through its Committees in seeking to further the interest of the profession and the prestige of the lawyer.

Our Society manifests a keen concern with problems of social welfare and civil rights which we, as Americans and members of the bar of Jewish faith, must seek to solve.

Already recognized as an important factor for the common good in the profession the Society needs help to broaden the range of its influence and increase its usefulness. You are urgently invited to take part in the manifold activities of our bar association.

Volunteer For Committee Service!

Listed below are the Standing Committees with names of Chairmen. Either write a letter addressed to me, or if you prefer, clip out this list and indicate the committee on which you desire to serve, stating your first and second preferences. Please address me at The Decalogue Society of Lawyers, 180 W. Washington St., Chicago 2, Illinois.

ARCHIE H. COHEN, President

Standing Committees

BUDGET AND AUDITING	
Roy I. Levinson	FR 2-1266
CITY AND STATE LEGISLATION	
Benjamin M. Becker	FI 6-2622
Marshall Korshak	RA 6-2038
CIVIC AFFAIRS	
Elmer Gertz	AN 3-3553
CONSTITUTION AND BY-LAWS	
Maxwell Andalman	ST 2-6366
THE DECALOGUE JOURNAL	
Benjamin Weintroub, Editor	DE 2-6554
DIRECTORY AND DIARY	
Oscar M. Nudelman	FR 2-1266
ETHICS AND INQUIRY	
Samuel Allen	RA 6-8000 Ex. 461
FEDERAL LEGISLATION	
Harry G. Fins	FI 6-0047
FORUM	
Bernard H. Sokol	ST 2-6603
FOUNDATION FUND	
Nathan Schwartz	ST 2-8822
HOUSE AND LIBRARY	
Reuben S. Flacks	DE 2-3340
INSURANCE	
L. Louis Karton	RA 6-8000 Ex. 759
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Leon M. Despres	FR 2-2511
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Bernard Epton	WE 9-6151
Joseph Solon	CE 6-5520
Seymour Velk	WE 9-6151
MEMBERSHIP RETENTION AND CONSERVATION	
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MERIT AWARD	
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PLACEMENT AND EMPLOYMENT	
Michael Levin	AN 3-3186
PLANNING, ORGANIZATION, SOCIAL WELFARE	
Jack E. Dwork	FI 6-4747
PROFESSIONAL EDUCATION	
Harry A. Iseberg	FR 2-2511
PUBLIC RELATIONS AND PUBLICITY	
Leonard J. Grossman	RA 6-2026
SPEAKERS BUREAU	
Morton Schaeffer	ST 2-1225
YOUNGER MEMBERS ACTIVITIES	
Harold Nudelman	FR 2-1266

Hebrew University Law School

Member Morris E. Feiwell, Vice-President of The American National Bank of Chicago, addressed our Board of Managers and members at a luncheon meeting, September 7 at the Covenant Club. Feiwell spoke in behalf of The American Friends of Hebrew University in Jerusalem, an organization of which he is Midwestern Chairman.

The speaker emphasized the needs of the Law School at the university and, urged immediate and generous aid to this new development in Israel's great educational center. Inaugurated only two years ago its faculty already numbers some of Europe's outstanding legal scholars but means are not yet available to house all of its departments under one roof. A large number of students have already enrolled and the Law Faculty of The Hebrew University has assumed the task of providing facilities for professional legal training in Israel as well as preparing men and women for the civil service whose duties require a legal education. The study of Jewish Law will occupy a special place in the curriculum of the Law School.

Feiwell appealed to the legal profession generally and, to lawyers of Jewish faith in particular, to help The Friends of American Hebrew University in its efforts to gain support for an outstanding Israel institution.

The Illinois Commerce Commission

By BENJAMIN I. MORRIS

Member Benjamin I. Morris, was on the staff of the Illinois Commerce Commission for over fifteen years, serving as attorney, assistant commissioner and hearing officer. He is a Past President and a founder of the Covenant Club. Past President, The Chicago B'nai B'rith Council and of the District Grand Lodge No. 6, B'nai B'rith.

The Illinois Commerce Commission created under the Public Utilities Act is vested with general supervision of all public utilities in the State.[1] The Commission is given jurisdiction over the rates a public utility may charge, as well as all other matters relating to the operation and the business of public utilities. The Commission has no arbitrary powers.[2] It is a legislative agency, created for the purpose of applying numerous details of regulatory police power over public utilities.[3] The Commission consists of five members, not more than three of whom may be members of the same political party at the time of appointment.

The extent of the Commission's activities may be judged from a glance at a number of public utilities under its jurisdiction. There are 200 telephone companies in Illinois, ranging from the Illinois Bell Co., which does 90% of the telephone business in the State, down to a number of companies that have revenues of less than $10,000 a year. There are 20 to 30 electric companies and a similar number of gas companies; also a number of water companies certificated to operate in Illinois. About 160 motor bus companies in local and intercity operations as well are under the jurisdiction of the Commission, the largest of which is the Chicago Motor Coach Co. in Chicago. The Commission licenses some 500 grain and personal property warehouses, over which it has a certain amount of supervision.

An important part of the Commission's work is the protection of railway and highway crossings. It investigates accidents involving railroad trains and automobiles. Where investigation shows it to be necessary, the Commission has the power to order grade crossing protections to be installed or improved. This the Commission does in more than 200 cases per year. The Commission deals with about 400 formal service cases per year, and more than 500 formal cases dealing with the financial transactions of utility companies. There are also more than 100 formal rate cases a year and about 200 involving safety other than on grade crossings. Requests for increases in more than 40,000 individual rates are filed with the Commission annually. Most of them are for special situations, but all must be checked and many investigated to make sure that they are proper and reasonable. If so found they are permitted to go into effect at the end of thirty days. However, when a rate increase will affect a great many people, the Commission suspends the increase until public hearings are held. In all, about 1200 formal cases of all sorts per year require the Commission's attention. In addition, there are many matters which do not become formal cases, which involve a lot of work by the Commission's staff and often result in adjusting or satisfying complaints on orders by the Commission. The Commission's staff consists of about 150 persons geared to doing the work efficiently, requiring an annual budget of approximately $2,000,000. One quarter of its expenses the State gets back from certain fees which utility companies are charged by the Commission.

The Commission has jurisdiction over holders of the voting capital stock of all public utilities under its supervision. This extends over affiliated interests having transactions other than ownership of stock and receipt of dividends therefrom.

All utilities must first secure from the Commission an order authorizing the issuance of stock and stock certificates, bonds, notes and other evidences of indebtedness payable at periods of more than twelve months after the date thereof. No management, construction, engineering supply, financial or similar con-

[1] Chicago North Shore and Milwaukee Railroad Co. vs. City of Chicago 331 Ill. 360.

[2] Chicago Railways Co. vs. Commerce Comm. ex rel. Chicago Motor Coach Co. 330 Ill. 51.

[3] Lambdin vs. Commerce Commission ex rel. The Assumption Mutual Tel. Co. 152 Ill. 104.

tract, and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, with any affiliated interest, can be effective unless it is first filed with and consented to by the Commission.

Complaints may be made by the Commission on its own action or by any person or corporation, Chamber of Commerce, Board of Trade or any industrial, commercial, mercantile, agricultural or manufacturing society or any body politic or municipal corporation by petition or complaint in writing, setting forth any act or things done or omitted to be done in violation or claimed to be in violation of any provisions of the Public Utilities Act or of any order or rule of the Commission. No public utility can abandon or discontinue any service without first securing the approval of the Commission.[4] It is the duty of the Commission to see that the provisions of the statutes of this State affecting public utilities are enforced and obeyed.[5]

While the Commission has been designated as an arm of the legislature, proceedings before it must observe the requirements of due process. To assure this, Court review of its action is provided. Section 65 of the Commerce Commission Act requires the Commission to make and enter findings concerning the subject matter of facts inquired into, and enter its order based thereon. Such findings of fact must be specific enough to enable a Court intelligently to review the decision of the Commission and to ascertain whether the facts offered a reasonable basis for the order entered.[6]

The Orders of the Commission are entitled to great weight and can be set aside only when it is clearly apparent that such orders are arbitrary or are unreasonable or directly contravene some established rule of law.[7] The Court in reviewing an order of the Commission must either confirm or set aside the order as a whole; and where the Court reverses the order because a part of it is invalid, it need not consider the validity of any other part of the order, since the invalidity of a part renders the entire order invalid.[8] No appeal is allowed from any rule, regulation, order or decision of the Commission unless and until an application for a rehearing is first filed with and acted upon by the Commission.[9]

The purpose of requiring the filing of a petition for a rehearing as a condition precedent to court review is to give the administrative body a chance to correct any error it may have made. This has developed into a general principle of administrative practice and is intended to give more speedy relief than is possible in the Courts. It should also be noted that on appeal no error can be relied on to reverse the Commission that was not called to the Commission's attention in the petition for rehearing. Appeals from all final orders and judgments entered by the Circuit or Superior Court in review of rules, regulations, orders or decisions of the Commission may be taken directly to the Supreme Court.

The Commission's record with the Courts since 1949 has been remarkable. In no case where a suit has been brought to enjoin the enforcement of an order issued by it has either a permanent or a temporary injunction been granted.

[4] Ill. Rev. Stat. 1945 Chap. III 2/3 Par. 49a.

[5] Section 79 of the Act.

[6] Fleming vs. Ill. Commerce Comm. 388 Ill. 138.

[7] Public Utilities Commission vs. A. T. & S. F. Ry. 278 Ill. 58; Public Utilities Commission vs. Illinois Central 298 Ill. 151.

[8] Brotherhood of R. R. trainmen vs. Terminal R. R. Ass'n 379 Ill. 403.

[9] Smith-Hurd Ann. State 1949, Ch. Ill. 2/3.

CICERO RIOTS

Upon the recommendation of our Civic Affairs Committee, the Board of Managers of our Society forwarded a telegram to Hon. Howard J. McGrath, Attorney General of the United States, commending him for his decision to call a Federal Grand Jury to investigate and report possible violations of the Civil Rights Act during the recent Cicero riots.

MERITORIOUS PUBLIC SERVICE

Members Marshall Korshak State Senator, Fifth Senatorial District, and Edward P. Saltiel State Senator, Thirty-first Senatorial District were among the seven state of Illinois Legislators to receive the *Best Legislator Award* from the Independent Voters of Illinois League. The ceremonies of presentation took place at the Kimball Hall, November 5. Governor Adlai Stevenson, also a citation winner, was present at the event.

APPLICATIONS FOR MEMBERSHIP

BERNARD EPTON, JOSEPH SOLON, SEYMOUR VELK, *Co-Chairmen*

APPLICANTS	*SPONSORS*
Arnold Fredric Block	Harry Abrahams and Burton I. Stolar
Jerome S. Cohn	Carl B. Sussman and Aaron H. Cohn
Morris E. Feiwell	Archie H. Cohen and Judge Julius J. Hoffman
Raymond N. Friedlander	Michael Levin
Harry S. Greenstein	Michael Levin
Reginal J. Holzer	H. Burton Schatz
Paul Homer	A. Ovrum Tapper and H. Burton Schatz
Lester Mehlman	Bernard Koenig
Leonard J. Nemerovski	Richard Fischer and Bernard E. Epton
Bernard G. Sang	Archie H. Cohen and Nathan M. Cohen
Sidney Shalowitz	Beryl A. Birndorf and Nathan Glick

ELECTED TO MEMBERSHIP

Louis A. Bloom	Marvin H. Miner
Harold R. Burnstein	Myron E. Nelson
Sheldon O. Collen	Harold M. Nudelman
Stanton L. Ehrlich	Benjamin R. Paul
Edward J. Fruchtman	William R. Rivkin
Marshall M. Holleb	Guy E. Rodrick
Benjamin J. Kanter	Manuel Rosenstein
Leonard S. Kleinfeld	Morton Silver
Leon A. Kovin	Leo J. Spivak
Jerome Lerner	Arthur H. Torme
Eugene Lieberman	Melvin C. Ury
	Sherwin Willens

CHARLES J. KOMAIKO

Member Charles J. Komaiko has been appointed Chairman of the newly organized Regional Enforcement Commission to hear cases of wage ceiling violators in Illinois, Indiana, and Wisconsin. Komaiko is a Marine veteran of World War II.

YOUNG LAWYERS SEEK EMPLOYMENT

Chairman Michael Levin of The Decalogue Society Placement and Employment Committee reports that he has interviewed several young lawyers, newly admitted to the Illinois bar, who seek employment in a law office. If there is an "opening" in your office or if you know of one elsewhere, please phone Mr. Levin at ANdover 3-3186.

COMIC BOOK$ and PRIVACY

Molony vs. Boy Comics Publishers, Inc. 90 *N. Y. S. 2nd* 119 (*1st Dep't* 1950).

Condensed by member Louis J. Nurenberg from Fordham Law Review, March, 1951 issue. Mr. Nurenberg is an instructor of law at La Salle Extension University.

Plaintiff was a hero in a disaster caused by the crash of an Army Bombing plane into the Empire State Building in July, 1945. For this he was awarded the Medal of Valor. The story was, subsequently, featured in daily journals and newsreels throughout the country. Six months later an account of plaintiff's exploits appeared in form of a series of drawings in a publication called, "Boys Comics."

Plaintiff sued for infringement of his rights of privacy under the New York Civil Rights Law, alleging that he was threatened with court martial and discipline and was refused a position after leaving service because he had become a "comic book character."

The majority of the court held that the plaintiff's rights had not been violated because the publication in question was a factual presentation of legitimate interest. The fact that the article was presented pictorially, in the form of sketches through the medium of a comic book and, among a series of fictionalized items, did not preclude this finding.

The Fordham Law Review submits that, "a comic book should not have been placed in the same category as a newspaper. A comic book is not usually associated in the mind of the public as a medium of news dispersal." The Review agrees with the majority holding that the publication constituted a factual presentation of plaintiff's deeds, but that there may be reason to doubt that there should be a privilege to continue the plaintiff's news value six months after the event in a medium which is conventionally not a channel for the dissemination of news.

The Legal Profession Expects . . .

That those alone may be servants of the law who labor with learning, courage and devotion to preserve liberty and promote justice.

—An Inscription on the University of Virginia Law School Building

Legal Aspects of the Kefauver Committee Proceedings

By JOSEPH L. NELLIS

Formerly Associate Counsel, Special Committee to Investigate Organized Crime (S. Res. 202, May 1950); Special Counsel N. Y. State Crime Commission; Partner Dunning, Nellis and Lundin, Washington, D. C. Mr. Nellis is a member of The Decalogue Society of Lawyers.

The essential function of the Committee was to obtain facts concerning the use of the channels of inter-state commerce by organized criminals. The Report of the Committee issued on May 1, 1951, attests to the successful discovery of these facts, but the by-products of the most famous Congressional investigation of modern times have been great and many. I like to think of these by-products in terms of three general categories: *First,* the exposure to the public of criminal gangs and how they operate; *Secondly,* the individual instances wherein, as a direct result of Committee revelations, local grand juries have been formed and new state, as well as volunteer, crime commissions have sprung into action; and *Thirdly,* the novel and interesting legal questions which have arisen as a result of Committee hearings and procedures.

Perhaps the most interesting subjects to lawyers and the legal profession generally, which are closely identified with the Committee's hearings, are the legal issues raised by witnesses who have been cited for contempt of the Committee by the Senate, as well as the questions yet to be determined concerning those witnesses whose testimony appears to be at variance with the facts.

In order to fully appreciate the legal problems here involved it would perhaps be useful to review briefly the steps required by law to be taken by a Congressional Committee before it puts witnesses on the stand. First, the Committee must authorize the hearing pursuant to its own rules and those of the Senate. If there is lack of compliance with the rule, for example, that a majority of the Committee must approve the holding of a hearing, there is a possibility that a witness might successfully defend himself against perjury on the assertion that no competent tribunal exists, since the taking of testimony was not authorized by the majority of the Committee which alone has this power.[1]

In a recent case[2] the Supreme Court held that the quorum requirement with respect to the authorization of hearings is not fully applicable in an action for contempt, by reason of failure either to respond to a subpoena or to produce the books and records called for. The Bryan opinion seems to indicate that no quorum of the Committee would have to be present in order for a court to adjudge a person guilty of contempt for refusals to answer.

These issues become of material importance when it is recognized that a great many of the hearings of the Committee were conducted by a subcommittee of one (in the majority of instances, Senator Kefauver, the Chairman). Concerning a given resolution of the Committee authorizing a subcommittee of one to take testimony, objections most often raised by counsel for witnesses were twofold: *First,* that no quorum of the Committee was present; and *Secondly,* that the questions asked were not "pertinent" to the inquiry.

The Committee, by resolution early in its life, authorized the Chairman to issue and sign all subpoenas. Lawyers for prospective witnesses have raised questions as to his authority to do so. The Congressional practice has been for some time that Committee chairmen have the authority to issue subpoenas without any formal resolution, and a House precedent for this action dating back to 1837 has long been established.[3] S.R. 202, which established the Kefauver Committee, authorized delegation of the subpoena power to a subcommittee. In effect, therefore, the Committee authorized the Chairman to act as a subcommittee of one in regard to the issuance of subpoenas.

With this brief background I now turn to an examination of the contempt problem itself as it relates specifically to the work of the Committee. There are certain fundamental precepts

[1] Christoffel v. U. S., 338 U. S. 84.

[2] U. S. v. Bryan, 70 Sup. Ct. 724.

[3] In re R. M. Whitney, 3 Hinds' Precedents, Section 1668.

which must be borne in mind: *First,* witnesses appearing before a Congressional Committee have no privilege with respect to the Fifth Amendment as to answers that would tend to incriminate them only under state law.[4] *Secondly,* the Committee was required to and did respect the privilege where an answer would tend to incriminate a witness under Federal law, even though under the present Congressional immunity statute, weak as it is, no Federal prosecution could result from any admissions made by the witness in response to such a question.

In my opinion, the great majority of the thirty-three witnesses cited by the Senate for contempt of the Committee asserted a privilege against incriminating themselves of state offenses, and it is my belief that the courts will not sustain these assertions upon individual examination of the law and facts. It must be noted however that the Supreme Court in *United States v. Hoffman,* decided in June 1951 materially weakened prosecutions for contempt of Congress by a narrow construction of the Fifth Amendment so as to protect the privilege against self-incrimination. In that case, the Court held that the answer to the question "What is your business" might tend to incriminate the witness of a federal offense.

Court action for contempt of Congress[5] is based upon a certification to the Senate by the Committee, accompanied by a resolution and a report upon which the Senate votes. If the vote is in favor of the citation, the President of the Senate certifies the record to the United States Attorney for the District in which the contempt was committed, and Section 192 becomes applicable, providing, upon conviction, imprisonment for not less than one month nor more than twelve months and a fine of not more than one thousand dollars nor less than one hundred dollars for each count.

The question has arisen as to whether, once a contempt of the Committee has been committed, a United States Attorney may cause the indictment of the witness on his own motion,[6] or whether it is necessary for the United States Attorney to withhold action in presenting the matter to the grand jury until the contempt is certified to him by the President of the Senate. This question arises because Sections 192 and 194 present doubts about the proper procedure to be taken in such cases. If Section 192 stood alone, there would be no problem, because the general provisions of Title 28, U.S.C., require the United States Attorney to prosecute crimes against the United States and authorize grand juries to inquire into crimes brought to their knowledge and to return indictments. However, Section 194 provides in detail for the certification of contempts by the President of the Senate or the Speaker of the House to United States Attorneys, who, in turn, are to be directed to present the matter to the grand juries. The authorities are in conflict.[7] The Committee legal staff has tended toward the view that Section 194 is mandatory, rather than permissive, and that certification by the President of the Senate is necessary, although in the case of O'Hara it encouraged the United States Attorney for the Northern District of Illinois to proceed under Section 192 in the hope that the Court would clarify the confusion in favor of the more time-saving procedure adopted by Mr. Kerner.

Among the most interesting problems which the courts will be called upon to resolve in connection with contempts committed before the Committee are the refusals of certain witnesses to testify before the television cameras. In St. Louis, James J. Carroll, a self-described "betting commissioner" offered to testify fully and freely if the television cameras were turned off. In New York, Frank Costello objected to the televising of his face, and the television audience was treated to an excellent view of his well-manicured hands throughout his testimony. In Washington, Cleveland mobsters Morris Kleinman and Louis Rothkopf asserted that their right not to be televised was based, not upon the usual claim of incrimination under the Fifth Amendment, but rather that the televising of their voices and faces was an invasion of their right to privacy and, in addition, subjected them to varying degrees of "mike-fright," making it impossible for them to testify fully

[4] U. S. v. Murdock, 284 U. S. 141; Feldman v. U. S., 322 U. S. 487; U. S. v. St. Pierce, 128 F (2nd) 979.

[5] 2 U. S. C., Sections 192 and 194.

[6] As in the case of U. S. v. Ralph J. O'Hara, indicted by the Grand Jury, Northern District of Illinois, December, 1950.

[7] Ex parte Frankfeld, 32 F. Sup. 915; U. S. v. Josephson, 165 F. (2nd) 82; In re Chapman, 166 U. S. 661.

and frankly. The Committee has had reason to believe that none of these claims were honestly asserted.

Since these matters are now before the courts, or are in varying degrees of preparation for the courts, it would not be desirable to comment fully on the various defenses asserted. Nevertheless, I believe it fair and proper to comment that the courts have held that judges may not pass upon the propriety of a Congressional Committee's hearings unless they transgress authority committed to them by Congress, and that a public hearing of a Congressional Committee includes the right of newspapers to be represented, along with representatives of other public media of communication.[8] It is difficult to understand what substantive difference exists between a public hearing held in a room that accommodates thirty people, an auditorium that might accommodate five thousand people, or the televising and broadcasting of a public hearing in pursuit of a legal legislative purpose and conducted with dignity and propriety.

In spite of my belief, so stated, I should add that I privately hope that the Senate, the House, and the national associations of broadcasters and telecasters will soon create and put into effect a code of conduct which, by its limitations, will prevent the abuses many people legitimately feel might follow as a result of a widespread use of television at Congressional and other public hearings.

To the layman contradictory statements of witnesses as to a given set of facts firmly establish a case of perjury. As lawyers, we know that the contradictory statements elicited from witnesses at Congressional hearings[9] do not necessarily establish a case of perjury under the present perjury statute, 18 U.S.C., Section 1621, as interpreted by the courts. This Section requires the prosecuting attorney to prove that the witness knew his testimony was false at the time he gave it,[10] that the matter concerning which the perjured testimony was given was material to the issues,[11] and that there has been corroborative testimony on the part of other witnesses. In the face of these requirements it is obvious that much of the alleged perjured testimony given to the Committee must be tested by the rather rigid requirements of the statute, as distinguished from mere contradictory assertions before the Committee. In its Third Interim Report the Committee recognizes this fact.

Various immunity statutes have been enacted in order to obtain evidence which could not otherwise be obtained because of the prohibition of the Fifth Amendment of the Constitution against compelling a person "in any criminal case to be a witness against himself." The Committee has often expressed its opinion that the existing statutes do not afford complete immunity and thereby prevent a legislative committee from obtaining facts material to its inquiry. The Attorney General has recommended that Section 3486 of Title 18, United States Code, be amended to provide a complete bar against prosecution or penalty on account of any matter concerning which a person is compelled to testify after he has asserted his Constitutional privilege. It is highly necessary and desirable that such legislation be enacted at the earliest practicable date. The Committee was deprived of much useful and relevant information as a result of its inability to give immunity to witnesses engaged in interstate criminal activities, where policy would dictate the granting of immunity rather than subjecting a witness to the possibility of a conviction for contempt.

Another legal question broadly raised by counsel for hostile witnesses relates to the pertinency or relevancy of the questions asked to the scope of the inquiry. In cases in the Supreme Court, dating from 1929[12] and up to the present time,[13] it has been held that Congressional investigators are limited to ques-

[8] Dennis v. U. S., 171 F.(2nd) 986, cert. granted 337 U. S. 954; Eisler v. U. S., 170 F.(2nd) 273, cert. dismissed 337 U. S. 954; Irwin v. Ashhurst, 158 Dre. 61; Anthony v. Morrison, 83 F. Supp. 494, Aff'd, 173 F. 2nd 897, cert. den. 338 U. S. 819.

[9] As, for example, the testimony of John Crane, Louis Weber, James Moran, and William O'Dwyer before the Committee in New York, March, 1951. Subsequently, Moran and Weber were tried and convicted of committing perjury before the Crime Committee at its New York hearings.

[10] U. S. v. Otto, 54 F.(2nd) 277; Fotie v. U. S., 137 F.(2nd) 831.

[11] Carroll v. U. S., 16 F.(2nd) 951; Morford v. U. S., 176 F.(2nd) 54; U. S. v. Hirsch, 136 F.(2nd) 976.

[12] Sinclair v. U. S., 279 U. S. 263; McGrain v. Daugherty, 273 U. S. 135; I. C. C. v. Brimson, 154 U. S. 447.

[13] Barsky v. U. S., 167 F.(2nd) 241, cert. denied 334 U. S. 843 (1948).

tioning which is pertinent to the inquiry and within the scope of the authority of the resolution creating the Committee.

The standards of pertinency in an investigation such as one into organized crime are undoubtedly broad enough to cover all the questions asked by the Committee. In the Barsky case the Court held that books and records and correspondence of an association which collected relief funds, and which may have spent some of the funds for pro-Communist propaganda, were relevant to an inquiry under which a Committee of the House was authorized to inquire into "subversive and un-American propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution." [14]

It is believed that the Committee rightly held that events remote in time, such as a criminal record dating many years back, could easily be shown to have relevance to the pattern of organized crime today and to be within the scope of the Senate Resolution authorizing the Committee to function. The question of pertinency was raised largely by counsel whose clients were sought to be questioned on their activities in bootlegging days. They generally objected to these questions, saying that the events were remote in point of time and the records of the individual were before the Committee anyway; but it is obvious, as stated in the Third Interim Report of the Committee, that the pattern of organized crime operating in interstate commerce did not just come into being overnight. The associations and contacts which the criminal gangs of the roaring thirties established among themselves are the focal point of the arrangements maintained today by these selfsame individuals in the gambling, narcotic, counterfeiting, and white slave businesses. Therefore, events remote in time to which most of the objections by counsel were directed, were obviously pertinent to the Committee's inquiry.

Again, other objections based upon relevancy were raised against attempts by the Committee to inquire into legitimate business activities of hostile witnesses. There was the argument that, since the witness was engaged in a legitimate business, it was without the scope of the Committee's authority to inquire into that business. This argument fails, in my opinion, for the same reason noted above in the case of objections directed to remoteness of events. The Committee obviously had the duty of ferreting out the extent to which racketeers and criminals had infiltrated legitimate businesses and the extent to which, in those businesses, they used methods of coercion, restraint, and monopoly.

It is clear from the record taken in fourteen states, covering activities in thirty-five states, that those relatively few witnesses who refused to answer questions on alleged Constitutional grounds in large part decided that they would rather risk a trial for contempt of the Senate than answer the Committee's questions about their activities, incomes, and associations. It may be that in some cases this gamble will pay off. It is to be hoped, however, that the courts will not reward the recalcitrant few, but will come to grips directly with the serious Constitutional questions presented.

Finally, I should add a word about the critics. By and large the Committee's efforts have been widely applauded. In some cases, constructive criticism of the Committee's procedures have resulted in immediate improvements. But for those very few who saw in this work of monumental legislative proportions nothing but an opportunity to carp on personalities, I can only say that our democracy is a strange and wonderful thing. Whatever a critic's motives, and whatever the extent of public notice of his destructive comments, the record achieved by the Committee in terms of doing the job it set out to do, with dignity and due regard for the rights of individuals, speaks for itself.

[14] 167 F.(2nd), at page 247.

MORRIS BROMBERG

Member Morris Bromberg has been elected Chairman of the Administrative Council, Zionist Organization of Chicago.

NATHAN SCHWARTZ HONORED

Nathan Schwartz, member of our Board of Managers, was elected President of the Alumni Association of the De Paul University.

The Lawyer's Income

By WILLIAM WEINFELD

This article is a condensation of a study published by Office of Business Economics, United States Department of Commerce; it concerns the income of lawyers for the period from 1929 to 1948. Mr. Weinfeld is a member of the National Income Division, Office of Business Economics.

MEMBER DAVID J. SHIPMAN *who condensed this analysis was formerly secretary of the Illinois State Bar Association, Section on Law Office Management, chairman of the Chicago Bar Association Committee on Law Office Organization and Management; and chairman of the Illinois State Bar Association, Committee on Professional Service.*

Where the term "mean" net income is used it denotes the ordinary average, that is the sum of all net incomes received divided by the number of recipients. Where the term "median" net income is used it means that point above which and, below which, half of all incomes fall. As compared with the mean, the median is the more typical, being much less affected by the relatively few very high or very low incomes.

For the purpose of this article "independent" lawyers are those who receive most of their income from practice on their own or as members of firms; and "salaried" lawyers are those who receive most of their income from salaries paid for their legal services.

About half the lawyers are independent; one quarter are salaried, working for other lawyers or law firms; and one quarter are salaried working for industrial firms, banks, unions, government agencies, etc. Lawyers no longer practicing were not considered by the surveys.

The figures are rounded to the nearest $100; and where no date is mentioned it may be assumed that the year referred to is 1947.

By 1948 the mean net income of all United States lawyers was $8,300 and the median, $6,300. They were below physicians but above dentists. They showed a greater range from the median than other professions but a smaller range than businessmen.

The mean for independent lawyers had reached $8,100 or 47% above 1929 ($5,500) and 69% above 1941 ($4,800). The increase of 93% in the median from 1941 ($3,000) to 1948 ($5,700) is even more significant. The proportion of "overhead" to gross (mean) increased from 31% in 1929 to 36% in 1948.

The lawyers income corresponds with general business conditions. The independent lawyers, very closely. However, the spread especially among independent lawyers is much greater in times of depression than in times of prosperity.

Much more money is made by the independent lawyer from service to business than from service to persons. Although the total receipts from persons is a little more than from businesses, 70% of the independent lawyers rely on individuals rather than business for most of their income. As a result, the mean net of lawyers relying for at least 90% of their receipts from business is $14,300 or almost four and a half times as much as those relying entirely on individuals, only $3,300; and lawyers relying mostly on business received $11,800 or over twice the $5,600 received by those relying mostly on individuals.

While the mean of the independent and salaried lawyers is quite similar (1947: $7,517 and $7,560) other factors reveal marked differences. The salaried median ($6,100) is 16% larger than the independent median ($5,300), revealing a much greater spread among independent practitioners. 25% of the independents but only 6% of the salaried showed incomes under $3,000. Further, the one quarter of the lawyers who worked for salaries from non-lawyer employers generally had both a higher mean and median because of their relatively high concentration in large population centers.

One of the most significant findings of the survey was that the larger the practicing unit or firm the larger the average income of the lawyer members of the unit or firm. About 75% of the independents were individual practitioners; 15% were partners in two member firms; 7% in three or four member firms; and 5% in five or more member firms. As to the practicing units themselves 88% were indi-

vidual practitioners; 9% had two members; and only 3% had more than two members. The mean net income of the individual practitioning alone was only $5,800; of each member of a two partner firm $8,000, almost 40% more; of a three partner firm $12,800; and of firms of nine or more partners, $27,000, or almost five times as much as the individual practitioner.

Both mean and median incomes generally vary directly with the size of the community, except that in times of depression, the largest cities tend to fall below the intermediary cities. The mean incomes of independent lawyers in cities of a million or more generally ran as much as three times as high as those where the population was less than a thousand. Salaried lawyers varied less. However, most of them were concentrated in the large centers. Only one-ninth of the lawyers in places of less than a thousand but more than half in centers over a million were salaried. In communities under 25,000 salaried lawyers had larger mean and median net incomes than independents; but in large cities the independents had consistently higher means, with medians showing no clear pattern. One third of all attorneys practice in cities of half a million or more.

Geographic regions also show some interesting differentials. Whether all lawyers, independent practitioners, salaried lawyers, the mean or the median are considered, the Middle East and Far West are markedly highest; New England and the Central States are intermediary; and the South East, South West and North West regions are well below all others. It must be kept in mind however, that a regional average often masks important differences among constituent states and localities.

Among the states, lawyers in California, New York, Pennsylvania, Georgia, Connecticut, Illinois and Michigan reported the highest average incomes in the order named. In nine selected large cities the situation as to means is as follows: 1. Los Angeles $10,900; 2. Washington $9,900; 3. New York $9,800; 4. Philadelphia $9,600; 5. Chicago $9,400; 6. Detroit $9,100; 7. Baltimore $8,100; 8. Cleveland $8,500; 9. Boston $7,500. As to medians the order is a bit different: 1. Philadelphia $8,200; 2. New York $7,700; 3. Los Angeles $7,400; 4. Detroit $7,400; 5. Washington $7,000; 6. Chicago $6,400; 7. Baltimore $6,200; 8. Boston $5,600; 9. Cleveland $5,000.

As in any other occupational groups, age is very important and as in most, at the lowest ages income is lowest. Then there is a gradual rise until the peak is reached and thereafter a decline. Independent lawyers reach their highest mean ($9,900) and highest median ($7,000) between 50 and 54 years of age. Salaried lawyers on the other hand, reach their peak mean ($10,600) and peak median ($8,000) between 60 and 64 or about ten years later.

With only a few minor exceptions, salaried lawyers have higher mean and median incomes than independent lawyers at each age level. At most levels this difference is rather small, ranging roughly between 5 and 15%; but over 60 the differential in favor of salaried lawyers is very pronounced. At age 60 to 64, the independent lawyers mean and median are $8,300 and $5,400 whereas the salaried mean and median are $10,600 and $8,000.

The number of years in practice follows closely the general pattern for age. The peak median net income for all lawyers ($7,800) being attained between 25 and 29 years of practice.

About 14 percent of the independent and 12 percent of the salaried lawyers are engaged in practice on a part time basis. The mean net income from legal practice of independent part time lawyers, $3,600, is less than half that of the full time independent lawyers, $8,100. On the other hand, the incomes of part time salaried lawyers are less than 20 percent below those for full time salaried lawyers, suggesting that salaried lawyers tend to engage in non-legal work less extensively than independent lawyers.

. . . If you ask what degree of assurance must attach to a principle or a rule or a standard not yet embodied in a judgment before the name of law may properly be affixed to it, I can only fall back upon a thought which I shall have occasion to develop farther, the thought that law, like other branches of social science, must be satisfied to test the validity of its conclusions by the logic of probabilities rather than the logic of certainty. . .

The Growth of The Law
JUSTICE BENJAMIN N. CARDOZO

BOOK REVIEWS

Constitutional Problems Under Lincoln, by J. G. Randall, University of Illinois Press. 596 pp. $4.50.

Reviewed by MORRIS K. LEVINSON

Mr. Levinson is Past President of The Decalogue Society of Lawyers.

Professor Randall brings out that Lincoln's critics charged that he had manœuvered the North into war by getting the South to "fire the first shot;" that there was fraud, profiteering, graft and corruption in Army contracts, bounty brokerage, cotton manipulation and trading with the enemy problems; that he was troubled by the question of loyalty oaths; and that he refused to accept the Dred Scott decision of the Supreme Court even before he was elected president. Also, that Congress usually went one way and Lincoln pursued his own tack; that such a noted preacher as Wendell Phillips denounced the Lincoln government as a "fearful peril to democratic institutions" and characterized the President as "an unlimited despot." Besides this, he was the target of savage, sarcastic and belittling criticism, not only from the newspapers and his political opponents, but from his own cabinet and the members of his party. He did not prevent war and it was not his peace that was carried out.

It is well to be reminded that the Civil War began without a declaration or "breach of relations" and it closed without a treaty; that Lincoln failed to call Congress into session for more than three months after hostilities began; that his "proclamations of blockade" and many of his executive orders were widely regarded as unwarranted, unconstitutional and several congressmen and senators thereafter, did not hesitate to designate him as "the greatest despot in history." Lincoln's suspension of the right of habeas corpus, and the setting up of military tribunals in conquered territory, amply supports the thesis that Lincoln really used more autocratic power by proclamation and executive order than any other president.

Lincoln sometimes admitted that his use of the "war powers" was questionable; that he frequently presented Congress and the Supreme Court, as well, with a *fait accompli*. He said simply: "We cannot escape history." The author quotes Woodrow Wilson as saying that the constitution "cannot be regarded as a legal document. It must be a vehicle of life." Constitutional history is not the study of a document, but rather of a social process—the process by which a community re-expresses from time to time its will concerning its government, re-fitting, re-interpreting and expanding its fundamental law so as to keep abreast of new issues. In this process the constitution is generally being molded to fit the nation as a garment is shaped to fit the wearer.

The author properly stresses that in war there may be value in some opposition, but not in the kind that is no better than partisanship, irresponsible accusation, or manœuvers to embarrass the existing administration. Lincoln's methods did not include smearing and character assassination!

The author does not permit us to forget the Virginia "Bill of Rights:"

"The military should be under strict subordination to, and governed by, the civil power. Even when a man of long standing Army service, and notable chiefly for that, has become president, (a practice whose wisdom is extremely doubtful) he is expected to function as a constitutional President, not as a military strong man. The President rules in peace and commands in war. He can overrule generals. The military arm is the instrument of the government."

Professor Randall's thesis, it seems to me, is to show how debatable are many of the provisions of our Constitution, especially as they relate to the powers of Congress and the President in time of war; and the fact that the Supreme Court must keep in step with the changing issues and problems of the times.

Essentially this work increases the stature of Lincoln, whose decisions have been borne out by the verdict of history.

Laughter Is Legal, by Francis Leo Golden. Frederick Fell, Inc., Publishers. 280 pp. $2.95.

Reviewed by ARCHIE H. COHEN

Mr. Cohen is President of The Decalogue Society of Lawyers.

The author, Dr. Golden, practiced dentistry for twelve years in Newark and Jersey City and then gave that up for a political and literary career. He says; "I have more degrees than a thermometer." He has previously written *For Doctors Only* and *Jest What the Doctor Ordered*—both replete with medical humor.

In *Laughter Is Legal* the author has collected anecdotes and stories about judges, jurymen, witnesses and lawyers which relate to incidents both in and out of the courtroom. Dr. Golden twits, with no malice, both lawyer and politician. "Humor," he says, "is the refusal to take yourself, your customs and your way of life seriously." The titles which adorn each chapter in the volume are provocatively funny. I cite a few: "Juries and Other Injuries," "The Ties that Blind," "Police to Meet You," "Torts and Retorts" and, "Don't Make a Will—It's a Dead Give-Away."

From statements of witnesses in various actions at bar, as given in the chapter, "The

Whole Truth—and nothing like the Truth" I cull the following: "I've met this man, counsellor, in places where any decent person would be ashamed to be seen." "He uses statistics as a drunken man uses a lamppost—for support rather than illumination."

Also the story of the prisoner who was told by the judge "I'll just fine you now . . . . but if this happens again tomorrow, I'll toss you in jail." Said the defendant, "I get it, fine today—cooler tomorrow."

This amusing book will rob the reader of the joy of being sad.

Defender's Triumph, by Edgar Lustgarten. Charles Scribner & Sons. 239 pp. $2.75.

Reviewed by BERNARD H. SOKOL

Mr. Sokol is a former U. S. District Attorney.

This is a book about four English trials for murder. It is the author's experience as a crime reporter that in trials such as these innocence is not enough and that, but for the remarkable skill of the great advocates pictured here, the defendants would never have been acquitted.

Here pictured is Edward Clarke's defense of Adelaide Bartlett, accused of chloroforming her husband, who had approved of and encouraged her friendship with a young minister and who wanted them to marry after his death. In the second story, Marshall Hall defends Robert Wood, a son of a respectable family, last in the company of the murdered woman who was a notorious prostitute. The other tales are similarly sordid but are noteworthy for the demonstration of skill on the part of the defense attorneys. Patrick Hastings successfully defends Elvira Barney, who shot her lover in the sight of her neighbors; and, most remarkable of all, the successful defense of Tony Mancini by the great Norman Birkett, who got his man off though he was proved to have carried the body of a woman around in a trunk in his travels.

All readers may not be so sure as the author that the defendants deserved acquittal, but after a reading of the book can well agree that it was the talent of their counsel which freed them in the face of tremendous odds.

A book of this type invites comparison with others which have appeared from time to time, in compliment to great trial attorneys. This one is superior, not only because of the author's literary ability, but because he is intelligently sensitive to the qualities in the attorneys themselves which contributed to their victories.

The jacket blurb refers to "brilliant legal strategy" in characterizing the subjects, but this is inaccurate. These tales are not demonstrations of mere strategy. There is nothing here resembling W. Fallon's artifices or S. J. Liebowitz's stage-craft. These are illustrations and examples of probity, thoroughness and imagination of a type which inspires. The reader will find this book not only educational, but excellent entertainment.

Fraud Under Federal Tax Law, by Harry Graham Balter. Commerce Clearing House. 296 pp. $6.00.

Reviewed by MAX A. REINSTEIN

Member Reinstein is a Certified Public Accountant.

The author has done a splendid job on the development of an income tax fraud case.

He has traced the handling of an income tax fraud case from its inception in the intelligence unit, on through the various other branches of the Government, to its ultimate disposition in the courts. In so doing Mr. Balter has been lavish with citations of cases and applicable laws and regulations pertaining to the subject.

After a lengthy introduction, the author develops his thesis by distinguishing between tax evasion and tax avoidance. He shows cases that are processed in the Bureau of Internal Revenue as well as in the Department of Justice. Chapters are devoted to the various civil sanctions imposed upon the tax evader, to criminal penalties and, to the jurisdictional recourse available to the taxpayer. And there are learned discussions pertaining to voluntary disclosures and the production of books and records. The latter two subjects are matters of vital concern to a taxpayer's counsel, since his decision at this point determines whether or not the Government will be "dished up a case on a silver platter." Special problems that arise in the trial of a criminal tax-evasion case are given considerable attention.

The author has set forth a large number of citations in his copious footnotes. While it is not to be expected that a study of this book will qualify a general practitioner as an expert in a highly specialized field, it will apprise him of many of the pitfalls ahead.

While the book is a worthwhile treatise on the subject, there are many refinements, of necessity, which could not in all truth be handled in a mere two hundred and ninety-six pages. *Fraud Under Federal Tax Law* is a valuable addition to a lawyer's library.

The Editor will be glad to receive contributions of articles of modest length, from members of The Decalogue Society of Lawyers only, upon subjects of interest to the profession. Communications should be addressed to the Editor, Benjamin Weintroub, 82 West Washington Street, Chicago 2, Ill.

Professional Education

Harry A. Iseberg, Chairman of The Decalogue Committee on Professional Education has announced the following schedule of four lectures by members of The Decalogue Society of Lawyers. All meetings will take place at the Covenant Club, on Fridays, at noonday luncheons.

THE PROGRAM

Friday, November 16, 1951
ELMER GERTZ
Chairman, Legal Committee
Housing Conference of Chicago
Subject — Current Aspects of Housing

Friday, December 14, 1951
PAUL G. ANNES
Lecturer on Federal Taxation
Subject — Analysis of Federal Tax Act of 1951

Friday, January 18, 1952
BERNARD H. SOKOL
Former Assistant U. S. District Attorney
Subject — Current Decisions of the Federal Courts

Friday, February 15, 1952
L. LOUIS KARTON
Head, Appeals Division Corporation Counsel's Office, City of Chicago
Subject — Current Decisions of the Illinois Supreme and Appellate Courts

Israel Bond Issue Appeal

Editor, THE DECALOGUE JOURNAL

Dear Sir:

One of the most significant events in the history of the American Jewish community is the $500,000,000.00 State of Israel Bond Issue currently being sold to the American public.

I am certain that most of the members of our Society are familiar with this undertaking, but it may be of some value to outline the most significant details.

The Bond Issue is strictly a matter of investment and not of charity. In no way is it competitive with the United Jewish Appeal. The proceeds of the Bond Issue will be used to help develop the economy of Israel by way of creating new industries, enlarging existing industries, and building public improvements to the end that jobs can be created for the new immigrants, and Israel can be developed into that great industrial and trading center of the Middle East, which it is destined to become.

The bonds are issued in two denominations:

1. An income bond starting at denominations of $50.00 and maturing in twelve years. Interest is cumulated at the rate of 3½%, so that at the end of the twelve year period they will pay 50% more than the original face amount, i.e., a $50.00 bond will pay $75.00, a $100.00 bond will pay $150.00, etc.
2. The second type of bond is a coupon bond paying 3½% each six months, maturing in fifteen years and starting at denominations of $500.00.

Practically all of the Jewish organizations in our community have organized or are in the process of organizing for the purpose of selling these bonds. In order for the bond sales to be successful in Chicago, which means a total sales of approximately $50,000,000.00, there must be mobilization of the organized community. I feel it can be assumed that the membership of The Decalogue Society of Lawyers, as individuals, will become bondholders. In addition, The Decalogue Society of Lawyers, as an important organization in the Jewish community, might consider assuming the responsibility for an organized effort to aid in this paramount task of assisting Israel to become economically self-sufficient.

Very truly yours,
(Member) Morris Alexander

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